IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.

:: O R D E R ::

Sanyam Lodha
Vs.
Union of India & Ors.

D.B. CIVIL WRIT PETITION (PIL) No.3076/2006 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

Date of Order :: 18-07-2006

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr. Kamal Joshi, for the petitioner.

This writ petition in the nature of public interest litigation has been filed in effect and substance for a direction upon the respondents to pay wages at the rate fixed as minimum wage viz. Rs.73/- per day to the labourers employed under the National Rural Employment Guarantee Schemes as provided in Section 6(2) of the National Rural Employment Guarantee Act, 2005(hereinafter referred to as NREG ACT) read with Section 3 of the Minimum Wages Act, 1948 in the districts of Banswara, Dungarpur, Jhalawar, Karoli, Sirohi and Udaipur.

Sub-section (1) of Section 6 of the NREG Act provides that notwithstanding anything contained in

the Minimum Wages Act, 1948, the Central Government may, by notification, specify the wage rate for the purpose of that Act. In terms of the proviso, the wage rate specified under such notification shall not be at a rate less than sixty rupees per day. Under Sub-section (2), until such time as a wage rate is fixed by the Central Government in respect of any area in a State, the minimum wage fixed by the State Government under Section 3 of the Minimum Wages Act, 1948 for agricultural labourers shall be considered as the wage rate applicable to that area.

The case of the petitioner is that the Central Government has so far not fixed the wage rate as provided under Section 6(1), and therefore, in terms of Section 6(2), the minimum rate fixed by the State Government under Section 3 of the Minimum Wages Act, i.e. Rs.73 per day is the rate at which wages are to be paid to the labourers employed in the execution of schemes under the NREG Act.

It may be stated at this stage that petitioner is a Member of the Rajasthan Legislative Assembly (MLA) and he claims to have brought instances of under-payment of wages to the labourers in the aforesaid districts to the notice of the State Government and also participated in hunger strike dharna etc. in respect of the grievance as peoples' representative.

We do not doubt the locus standi or bonafide of the petitioner, but we have grave doubts if any roving enquiry can be made into the allegation of under-payment of wages to the labourers employed under different NREG schemes in the districts at large. Needless to say that the question as to whether labourers, and which of them, are being paid less than the wage fixed by the State Government and if so, the extent of under-payment, can not be decided without taking evidence. On the other hand, we are satisfied that the Minimum Wages Act provides a complete machinery under which the relief can be claimed and granted to the concerned labourers.

Section 19 of the Minimum Wages Act provides for appointment of Inspectors by the appropriate Government having power to enter any premises or place where employees are employed or work is given out to out-workers in any scheduled employment in respect of which minimum rates of wages have been fixed under the Act, for the purpose of examining any register, record of wages or notices required to be kept or exhibited by or under the Act or rules made thereunder; to examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is an employee employed therein or an employee to whom work is given out therein. The Inspector also may require any person given out work and any out-workers, to give any information which is in his power to give,

with respect to the names and addresses of the persons to, for and from whom the work is given out or received, and with respect to the payments to be made for the work. Further, the Inspector can seize or take copies of such register, record of wages, etc. Which he may consider relevant.

Section 20 of the Act provides for adjudication of claims in respect of under payment of wages. Sub-section (1) lays down the manner of appointment of the Labour Commissioner or the Authority, as the case may be, by the appropriate Government to hear and decide for any specified area claims arising out of payment of less than the minimum rates of wages or in respect of the payment of remuneration for days of rest or for work done on such days etc. Under sub-section (2) , not only the employee having claim of the nature specified in sub-section (1) but also any legal practitioner or an official of a registered trade union authorised in that behalf or an Inspector or any person with the permission of the Authority may apply to such Authority for suitable direction in respect of the claim.

Under sub-section (3) when any application under sub-section (2) is entertained, the Authority is required to hear the applicant as well as the employer, and after giving opportunity of hearing and

after such further inquiry as may be considered necessary, direct -

> (i) in the case of a claim arising out of payment of less than the minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount of such excess, and
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> (ii) in any other case, the payment of the amount due to the employee, together with the payment of such compensation as the Authority may think fit, not exceeding ten rupees.

From a bare reading of the aforementioned provisions – without referring to other provisions of the Act – it is manifest that the claim in respect of payment of less than the minimum rates of wages can be effectively adjudicated upon not only at the instance of the employee concerned but also an official of a registered trade union or an Inspector or any person with the permission of the Authority. For lodging the claim, it may not be out of place to mention, no court fees is required to be paid and the enquiry under section (3) is summary in nature. It is evident that the remedy provided under the Act is effective, efficacious and expedient. As a matter of fact, while ordinarily the employee can be paid the amount equivalent to the minimum wages, in a proceeding under

Section 20(2)(3) he can also be awarded compensation upto ten times the amount of under payment.

We are conscious of the fact that the public interest litigation as a judicial remedy is primarily meant for the disadvantaged and deprived sections of the society to which the labourers belong whose cause the petitioner seeks to espouse, but having regard to the scheme of the Minimum Wages Act, we do not think asking the employees themselves or an official of a registered trade union or an Inspector or 'any person' with permission of the authority, to approach the Authority for redressal of the grievance would mean denying relief which can otherwise be granted in a public interest litigation. As we observed above, the question as to whether and to what extent the labourers, and which of them are being paid less than the minimum rate of wages fixed by the State Government is a question of fact which can be effectively and completely decided only by taking evidence. We are thus, of the view that the claim projected in this writ petition may be brought before the Authority constituted for different areas in the districts of Banswara, Dungarpur etc. as the case may be.

Counsel for the petitioner placed reliance on Sanjit Roy Vs. State of Rajasthan AIR 1983 SC 328, the reliance to our mind is totally misplaced. The subject

matter of the proceeding in the Supreme Court was the validity of Rajasthan Famine Relief Works Employees (Exemption from Labour Laws)Act, 1964. Section 3 of that Act excluded the applicability of the Minimum Wages Act in relation to workmen employed on famine relief work. It was held to be violative of Article 23 of the Constitution of India. The question as to whether the cases of under-payment at a rate less than the minimum rates fixed by the State Government under Section 3 of the Minimum Wages Act can be decided in the forum constituted under the Minimum Wages Act was not involved.

In the above premises, we are not inclined to entertain this writ petition.

At this stage, when the order was being dictated, counsel sought permission to withdraw the writ petition which is accordingly dismissed as withdrawn.

[MOHD. RAFIQ],J. [S.N.JHA],CJ.

Praveen